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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,950	12/01/2003	Andrew D. Wilson	MS303183.2	3606

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EXAMINER
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NUNEZ, JORDANY

ART UNIT	PAPER NUMBER
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2175

NOTIFICATION DATE	DELIVERY MODE
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08/07/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/724,950	<b>Applicant(s)</b> WILSON ET AL.	
	<b>Examiner</b> Jordany Núñez	<b>Art Unit</b> 2175	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 16 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: none.  
 Claim(s) objected to: none.  
 Claim(s) rejected: 1,5,7,8,10-13,16,18,19,24,25,27,28 and 30-52.  
 Claim(s) withdrawn from consideration: none.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/William L. Bashore/  
 Primary Examiner, Art Unit 2175

Continuation of 3. NOTE: The proposed amendment (e.g., "worn by the user [...]") to independent claim 11 reflects a change in scope to the independent claims and raises new issues for the Examiner to consider. Therefore said amendment will not be entered because said amendment would require further search and consideration by the Examiner..

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments have been fully considered but are not persuasive. Examiner reiterates that references to specific columns, figures or lines should not be limiting in any way. The entire reference provides disclosure related to the claimed invention. Examiner addresses only Applicant's most salient points. Applicant argues that:

1) At the cited portion of col. 8 lines 24-26, Kanevsky et al. discloses a system that films the gestures of an individual, matches it against a users pin database and verifies if the gesture matches the stored gesture. The result of this verification is applied to a grant/deny entry system that operates the door. In contrast, the claimed invention allows for interpreting the gesture received from the user to identify a command associated with that gesture. Thus, Kanevsky et al. is silent regarding a user command to control an object of a computer system received as a gesture, wherein the object is' a device connected to the computer or an application running on the computer as recited by independent claim 11. Kanevsky et al. is silent regarding a 3-D imaging component interprets the gesture image to execute the user command for control of the computer system as recited by independent claim 11 (page 11, last paragraph).

Examiner disagrees.

As to 1), Applicant does not explain why Kanevsky's door, which is operated by a computer, may not be reasonably interpreted as "an object of a computer system," and why the verification which is applied to a grant/deny entry system that operates the door may not be reasonably interpreted as controlling an object through "a user command" which is "received as a gesture" and interpreting "the gesture image to execute the user command for control of the computer system." It is rather clear, in Examiner's view, that a door which is controlled by a computer system based upon gestures made by a user teaches each and every limitation claimed. A conclusory statement stating otherwise may not be given much weight.

2) At the cited portions of col. 7, lines 55-56, Kanevsky et al. provides for gestures of different users captured in an enrolment session, and stored in a database. The gestures are utilized to recognize the individual, wherein on recognition the user is allowed access to a computer/facility/service. However, Kanevsky et al. does not provide for letting a user select a command and map it with a previously captured gesture, and hence is silent regarding the imaging component permits user selection of association of gestures with user commands, wherein different users' employ different gestures for execution of a given command as recited by claim 11 (page 12, lines 3-11).

Examiner disagrees.

As acknowledged by Applicant, Kanevsky teaches an enrolment session. Kanevsky (col 7, lines 54-63) also teaches that during an enrolment session, indicia such as what a user knows, what a user does, what a user owns, and what a user is collected for later comparison when the user is seeking access to a computer, service or facility. As one of ordinary skill in the art would readily recognize, the indicia collected would vary from user to user, in some instances according to user selection, even if the same access is sought between two users. Thus, Kanevsky clearly teaches an imaging component permitting user selection of association of gestures with user commands, wherein different users' employ different gestures for execution of a given command.

3) Further at col. 31, lines 59-65, Kanevsky et al. discloses a gesture pin that consists of a gesture in which the user displays a proof of possession such as an ID card. However, the gesture pin only verifies the identity of the user, and does not control a computer system. In contrast, the claimed invention discloses a wireless device worn by the user, that transmits orientation signals to a receiver in the computer, the orientation along with the gestures of the user are utilized to control the computer system. Thus, Kanevsky et al. is silent regarding a wireless control device worn by the user, the orientation of which is' used in combination with the gesture to control the computer system as recited by independent claim 11 (page 12, second paragraph).

Examiner disagrees.

As Applicant acknowledges, the user displays a proof of possession such as an ID card and that gestures are utilized to recognize the individual, wherein on recognition the user is allowed access to a computer/facility/service. As one of ordinary skill in the art would readily recognize, when displaying an item for recognition that item has to be displayed with certain orientation (i.e., facing the recognition apparatus). Thus, it is quite clear that Kanevsky teaches a wireless control device worn by the user, the orientation of which is' used in combination with the gesture to control the computer system as recited by independent.

4) Dependent claim 32 recites automatically learning gesture characteristics of a user associated with the user profile, and updating the user profile with the learned gesture characteristics. At the cited portions of col. 7 lines 63-67, Kanevsky et al. discloses that the gestures and sounds required of the user during a recognition session must be extracted from the user during an enrolment session, the gesture and sounds may be either predefined without input from the user or made up by the user. However, Kanevsky et al. is silent regarding automatically learning gesture characteristics an updating the existing user profile, and thus is silent regarding automatically learning gesture characteristics of a user associated with the user profile, and updating the user profile with the learned gesture characteristics as recited by claim 32

Examiner disagrees.

Kanevsky clearly teaches a user profile database (Col 6, lines 66-67). Kanevsky (col 7, lines 54-63) further clearly teaches updating said database that during an enrolment session, with indicia such as what a user knows, what a user does, what a user owns, and what a user is and using the collected indicia to validate gestures from the user. One of ordinary skill in the art would readily recognize that what a user knows is not static, and thus would require regular updating of said user profile database. Thus, Kanevsky clearly teaches automatically learning gesture characteristics of a user associated with the user profile, and updating the user profile with the learned gesture characteristics..

